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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,170	08/05/2003	Jiing-Yang Wu	08415-005001	6339

26161 7590 03/02/2006

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EXAMINER
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MAHAFKEY, KELLY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/634,170	<b>Applicant(s)</b> WU ET AL.	
	<b>Examiner</b> Kelly Mahafkey	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/5/03</u> . | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The terms "nutrient-enhanced agent" and "texture modifier" in claim 15 are relative terms that render the claim indefinite. The terms are not definite as recited in the claim or as discussed in the specification. The terms "nutrient-enhanced agent" and "texture modifier" could mean any number of ingredients.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 7, 14, and 15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rockland et al. (US 4124727).
5. Rockland et al. (Rockland) teaches of a reconstituted grain product manufactured by reconstituting a ground material, wherein the ground material comprises a plurality of grains including wheat, oat, rice, and barley and legumes including soybeans, having various respective cooking requirements. Rockland teaches that the in addition to flour,

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other materials can be ground to a mesh size of 100 and higher. Rockland teaches that texture modifiers, such as emulsifiers (i.e. gum) can be added to the composition. Refer specifically to Abstract, Column 2 lines 56-60, Column 4 lines 55-66, Column 6 lines 11-21 and 46-55, and Column 7 lines 14-20. In Example 2, Rockland teaches of the rice of the ground material, with the exclusion of the rice, (i.e. wheat flour) is between 1-50% by weight of the ground material.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rockland as applied to claims 1-5, 7, 14, and 15 above, and further in view of Igoo (Dictionary of Food Ingredients).

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9. Rockland et al. (Rockland) teaches of a reconstituted grain product manufactured by reconstituting a ground material, wherein the ground material comprises a plurality of grains including wheat, oat, rice, and barley and legumes including soybeans, having various respective cooking requirements. Rockland is silent to the reconstituted grain product as consisting of about 25% rice of the ground material by weight as recited in claim 6, to the reconstituted grain product as consisting of about 17.5% barley of the ground material by weight as recited in claim 8, and to the reconstituted grain product as consisting of about 17.5% oats of the ground material by weight as recited in claim 9.

10. Regarding the reconstituted grain product as consisting of about 25% rice of the ground material by weight as recited in claim 6, Igoe teaches (Page 120) that rice flour (i.e. ground rice) varies in variety and viscosity patterns during heating and cooling. Igoe teaches that ground rice is utilized in breakfast foods. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include any amount rice in the ground material depending on the type of ground rice chosen and the desired viscosity of the intermediate and final product. Because Rockland teaches of a food product and Igoe teaches of ingredients in food products, one would have a reasonable expectation of success from the combination.

11. Regarding the reconstituted grain product as consisting of about 17.5% barley of the ground material by weight as recited in claim 8, Igoe teaches that barley is a cereal grain which is high in carbohydrates, protein, calcium, phosphorus, and B vitamins (Page 17). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include any amount barley in the ground material depending on

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the desired nutritional content of the final product. One would have been motivated to include barely because of its nutritional value, such as, it is high in carbohydrates, protein, calcium, phosphorus, and B vitamins. Because Rockland teaches of a food product and Igoe teaches of ingredients in food products, one would have a reasonable expectation of success from the combination.

12. Regarding the reconstituted grain product as consisting of about 17.5% oats of the ground material by weight as recited in claim 9, Igoe teaches that teaches that oats and oat flour have antioxidant properties and are bent with other flours to retard rancidity (Page <sup>99</sup>~~100~~). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include any amount oats in the ground material depending on the desired nutritional content and shelf life of the final product. One would have been motivated to include oats because of it contains antioxidants. Because Rockland teaches of a food product and Igoe teaches of ingredients in food products, one would have a reasonable expectation of success from the combination.

13. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rockland as applied to claims 1-5, 7, 14, and 15 above, and further in view of Oplinger et al. (Alternative Field Crops Manual).

14. Rockland et al. (Rockland) teaches of a reconstituted grain product manufactured by reconstituting a ground material, wherein the ground material comprises a plurality of grains including wheat, oat, rice, and barley and legumes including soybeans, having various respective cooking requirements. Rockland is silent to the reconstituted grain

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product as consisting of about 17.5% buckwheat of the ground material by weight as recited in claim 10.

15. Regarding the reconstituted grain product as consisting of about 17.5% buckwheat of the ground material by weight as recited in claim 8, Oplinger teaches that buckwheat contains essential amino acids and protein. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include any amount buckwheat in the ground material depending on the desired amount of amino acids and protein in the final product. One would have been motivated to include buckwheat because it is a source of protein and amino acids. Because Rockland teaches of a food product and Oplinger teaches that the major use of buckwheat is for human food, one would have a reasonable expectation of success from the combination.

16. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rockland as applied to claims 1-5, 7, 14, and 15 above, and further in view of Duke (*Coix lacryma-jobi* L.).

17. Rockland et al. (Rockland) teaches of a reconstituted grain product manufactured by reconstituting a ground material, wherein the ground material comprises a plurality of grains including wheat, oat, rice, and barley and legumes including soybeans, having various respective cooking requirements. Rockland is silent to the reconstituted grain product as consisting of about 17.5% adlay of the ground material by weight as recited in claim 11.

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18. Regarding the reconstituted grain product as consisting of about 17.5% adlay of the ground material by weight as recited in claim 11, Duke teaches that adlay has been cited as having medicinal uses and was used as folk remedies for abdominal tumors, esophageal, gastrointestinal, and lung cancers. Refer specifically to Folk Medicine. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include any amount adlay in the ground material depending on the desired medicinal properties of the final product. One would have been motivated to include adlay because of its medicinal properties. Because Rockland teaches of a food product and Duke teaches that adlay can be used in food products (Uses), one would have a reasonable expectation of success from the combination.

19. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rockland as applied to claims 1-5, 7, 14, and 15 above, and further in view of Murray (Rice bran may lower cholesterol).

20. Rockland et al. (Rockland) teaches of a reconstituted grain product manufactured by reconstituting a ground material, wherein the ground material comprises a plurality of grains including wheat, oat, rice, and barley and legumes including soybeans, having various respective cooking requirements. Rockland is silent to the reconstituted grain product as consisting of about 17.5% rice bran of the ground material by weight as recited in claims 12 and 13.

21. Regarding the reconstituted grain product as consisting of about 17.5% rice bran of the ground material by weight as recited in claims 12 and 13, Murray teaches that



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rice bran fights high cholesterol, provides a high grade fiber, and can be digested by those who can not tolerate gluten, which is found in other bran. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include any amount rice brain in the ground material depending on the desired nutritional and health benefits of the final product. One would have been motivated to include rice bran because of its nutritional and health benefits, such as, it fights high cholesterol, provides a high grade fiber, and can be digested by those who can not tolerate gluten, which is found in other bran. Because Rockland teaches of a food product and Murray teaches of the addition of rice bran to food, one would have a reasonable expectation of success from the combination.

### ***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

23. *Brown Rice Bread* discloses of a composition which contains ground legumes and grains, specifically rice flour and soybean flour.

24. US 5137744 discloses of a the amount of fiber in different types of bran, and of several food products which can be made using a combination of bran and flour.

25. US 5296253 discloses of the benefits of adding a ground legume and flour composition for cereal foods.

26. US 5861178 discloses of a protein enriched soluble fiber composition.

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27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Handwritten signature of Kelly Mahafkey in black ink, followed by the date 2/22/06.

Kelly Mahafkey  
Examiner  
Art Unit 1761

Handwritten signature of Keith Hendricks in black ink.

**KEITH HENDRICKS  
PRIMARY EXAMINER**